

Appl. No. 09/086,821
Amdt. dated August 4, 2005
Reply to Office action of May 20, 2005

REMARKS

Reconsideration of this application is respectfully requested.

Claims 1, 6-16, 20 and 25-33 are pending. Claims 1, 6-16, 20 and 25-33 were rejected. Claims 13, 27, 29, and 31 have been amended to place these claims in better form for appeal, by correcting the grammar in claim 13 and canceling an extraneous sentence fragment from claims 27, 29 and 31. These amendments do not raise any new issue of patentability or introduce any new matter. Therefore, entry of these amendments under 37 CFR 1.116 is proper.

Reconsideration and allowance of the claims is respectfully requested in view of the following remarks.

Claims 1, 6-16, 20, 25, and 26-33 were rejected under 35 U.S.C. § 103 as being unpatentable over Hu (U.S. Patent No. 6,173,322) in view of Gruber (U.S. Patent No. 5,717,860), and further in view of Callsen et al., U.S. Patent No. 5,884,022 (Callsen). The rejection is respectfully traversed.

There would have been no suggestion or motivation for one of ordinary skill in the art at the time the invention was made to combine the references in the manner suggested by the office action, to achieve the claimed invention.

Hu and Gruber deal with a different general problem than that addressed by Callsen. Hu is directed to a network request distribution system based on static rules and dynamic performance data. Hu states, at col. 11, line 60 through col. 12, line 8:

In a preferred embodiment, proxy module 210 handles most failures of a content server 106 without disruption to client 104. Proxy module 210 merely has to re-query policy module 206 for a new content server 106 whenever the original content server fails to service the client request for whatever reason. If the failed content server was the last in the selected group, network request manager 102 might report the failure to client 104, with instructions to try again at a later time. If the failed content server was the last in the selected group, network request manager 102 might report the failure to client 104, with instructions to try again at a later time. However, in a preferred embodiment, proxy module 210 under these circumstances forwards the client request to a default content server 106. The default content server 106 services

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client requests from any proxy module 210 which was unable to provide a content server 1061 to service the request.

Thus, Hu deals with server failures in a completely different way than "automatically restarting that web server," as claimed in Applicant's independent claims. Hu's proxy module automatically redirects the requests, so that the failure of the original content server is moot. Even if there is no available content server in the redirect group, Hu redirects the request to a default content server. Hu is concerned with making sure that requests are serviced by redirecting them. Nothing in Hu suggests taking any action whatsoever to correct the problem in the server. Rather, Hu's system redirects and avoids the problem completely.

Graber also does not deal in any way with the problem of taking action to restart a server having a problem condition. The terms, "fail" and "failure" never even occur in Gruber. Gruber is merely concerned with a method of identifying an entity that has directed a user from one web page to another. Thus, if a user clicks on a hyperlink to redirect from a first site to a second, a composite URL identifying the first site is sent to the second site, so that the second site has information identifying how the user reached the second site.

Thus the combined teachings of Hu and Gruber would merely have suggested to one of ordinary skill that a request can be redirected to avoid an unavailable content server, and that the server to which the request is redirected will be able to identify from which URL the request is redirected. There is nothing in the combined teachings of these two references that would have suggested or would have motivated one of ordinary skill to take an action to fix the problem in the server.

One of ordinary skill in the art familiar with the combined teachings of Hu and Gruber would not have been motivated to look to Callsen. Callsen addresses a problem unrelated to that addressed by Hu and Gruber. Callsen deals with an ORB daemon for restarting a failed server.

"All method invocations received while in 'shutting down' state 503 are blocked, as indicated by arrow 511. When the server dies, i.e., finishes shutdown procedures, the shutdown timer is cancelled, any waiting method invocations are unblocked and the server state returns to 'start' state 500, as shown by arrow 512.

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Arrow 513 indicates a shutdown timeout condition wherein the shutdown timer has expired. If the shutdown timer expires, the ORB daemon assumes the server process is hanging and kills the server, returning the server state to 'start' state 500. Any waiting method invocations are unblocked and an error is logged. Whenever the server returns to 'start' state 500, any unblocked method invocations may attempt to restart the server." (col. 9, lines 45-57).

Callsen does not deal with redirection at all. Callsen only involves a procedure for ensuring that a server in the process of restarting can do so without having additional method invocations causing the restart to be aborted, requiring the restart operation to be initiated again. Callsen blocks these method invocations while the server is shutting down and restarting. If the restart is unsuccessful, then a method invocation requesting a restart may be unblocked to cause another attempt to start the server. Thus, Callsen teaches that method invocations for the unavailable server are blocked (held), until such time that they may be executed by the original host to which they were sent. These method invocations are not redirected to another server, even though another server may be available. This is the opposite of redirection, which avoids an unavailable server. Callsen teaches away from redirection.

Thus, one of ordinary skill in the art would not have been motivated to combine the teachings of Callsen (which teaches restarting a failed server, while blocking and holding method invocations till that same server can execute them) with Hu, which teaches redirection, to move a request from one server to another, and Gruber, which teaches identifying a site from which a request was redirected.

The official action has taken certain teachings of Callsen (how to restart a server without thrashing) out of their context. Callsen as a whole teaches that when a server is restarted, the pending method invocations are blocked, and may ultimately be unblocked and executed by the same server, without redirecting the method invocations to another server. Viewing the teachings of Callsen as a whole, one of ordinary skill would not have looked to the teachings of Callsen for modifying Hu's method of redirection, or Gruber's method of identifying a page from which a request is redirected.

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M.P.E.P. § 2142 recites:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. ... The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 -§ 2143.03 for decisions pertinent to each of these criteria.

M.P.E.P. § 2143.01 recites:

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an *implicit* showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also *In re Lee*, 277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002) (discussing the importance of relying on objective evidence and making specific factual findings with respect to the motivation to combine references); *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Therefore, a *prima facie* case of obviousness has not been established, and the rejections under 35 U.S.C. § 103 should be withdrawn.

In view of the foregoing remarks, Applicant submits that this application is in condition for allowance. Early notification to that effect is respectfully requested.

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The Assistant Commissioner for Patents is hereby authorized to charge any additional fees or credit any excess payment that may be associated with this communication to deposit account 04-1679.

Respectfully submitted,

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